

Remarks

Claims 12-14 are pending. Claim 12 has been amended. Claims 1-11 and 15-20 have been canceled without prejudice. Support for the claim amendments can be found throughout the application, including the claims as originally filed. Therefore, no new matter has been added. Importantly, the claim amendments and cancellations should not be construed to be an acquiescence to any of the claim rejections. Rather, the amendments and cancellations are being made solely to claim more clearly the invention and to expedite the prosecution of the instant application. The Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application. 35 U.S.C. § 120. Favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claim Rejections Based on 35 U.S.C. § 102(b)/35 U.S.C. § 103(a)

U.S. Patent No. 5,800,711 and U.S. Patent Application Publication No. 2002/0137973

Claims 12-17 stand rejected under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) based on the Examiner’s contention that they are anticipated or rendered obvious by U.S. Patent No. 5,800,711 to Reeve et al. and U.S. Patent Publication No. 2002/0137973 to Reeve et al. (collectively, the “Reeve references”). Specifically, the Examiner contends that the rejected claims read on the individual Reeve references or the combination of them. The Applicants respectfully disagree.

Nevertheless, in order to expedite prosecution, the Applicants have amended claim 12 to include the limitation “wherein the polyoxyalkylene block copolymer is selected from the group consisting of poloxamer 338, poloxamer 288, poloxamer 238, poloxamine 1107 and poloxamine 908.” Support for the claim amendment can be found throughout the application as filed, including but not limited to Examples 1, 4, 5, 7, 8 and 9, and original claims 15, 17, and 19. The Applicants respectfully assert that amended claim 12 is not anticipated nor rendered obvious by the Reeve references nor the combination of them.

The Applicants respectfully remind the Examiner that in order to anticipate a claim, a single source must contain all of the elements of the claim. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v.*

E.I. duPont De Nemours & Co., 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Importantly, the Reeve references are silent with respect to the polyoxyalkylene block copolymers recited in amended claim 12. Moreover, missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *See Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

Similarly, because the combination of the Reeve references fails to teach all of the limitations of amended claim 12, the Applicants maintain that the Examiner has failed to establish the required *prima facie* showing of obviousness with respect to the rejected claims. See MPEP 2143.03 (“[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981.”).

Consistent with the amendment to claim 12, dependent claims 15-19 have been canceled as they were rendered improper or redundant. The Applicants contend that rejected claims 13 and 14 are not anticipated or rendered obvious by the Reeve references or the combination of them as the claims depend upon amended claim 12.

Accordingly, the Applicants respectfully request the withdrawal of the claim rejections under 35 U.S.C. § 102(b) and § 103(a) based upon the either of the Reeve references or the combination of them.

U.S. Patent Nos. 5,531,925, 6,448,371 and U.S. Patent Application Publication No. 2005/0008610

Claims 12-17 stand rejected under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) based on the Examiner’s contention that they are anticipated or rendered obvious by U.S. Patent No. 5,531,925 to Landh et al. (“Landh”), U.S. Patent No. 6,448,371 to Berg et al. (“Berg”), and U.S. Publication No. 2005/0008610 to Schwarz et al. (“Schwarz”), or the combination of them. Specifically, the Examiner contends that the rejected claims read on the individual references or the combination of them. The Applicants respectfully disagree.

As noted above, in order to expedite prosecution, the Applicants have amended claim 12 to include the limitation “wherein the polyoxyalkylene block copolymer is selected from the group consisting of poloxamer 338, poloxamer 288, poloxamer 238, poloxamine 1107 and

poloxamine 908.” Support for the claim amendment can be found throughout the application as filed, including but not limited to Examples 1, 4, 5, 7, 8 and 9, and original claims 15, 17, and 19. The Applicants respectfully assert that amended claim 12 is not anticipated nor rendered obvious by any of the Landh, Berg, and Schwarz references, or the combination of them.

The Applicants respectfully remind the Examiner that in order to anticipate a claim, a single source must contain all of the elements of the claim. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Importantly, the Landh, Berg, and Schwarz references are silent with respect to the polyoxyalkylene block copolymers recited in amended claim 12. Moreover, missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *See Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

Similarly, because the combination of the Landh, Berg, and Schwarz references fails to teach all of the limitations of amended claim 12, the Applicants maintain that the Examiner has failed to establish the required *prima facie* showing of obviousness with respect to the rejected claims. See MPEP 2143.03 (“[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981.”).

Consistent with the amendment to claim 12, dependent claims 15-19 have been canceled as they were rendered improper or redundant. The Applicants contend that rejected claims 13 and 14 are not anticipated or rendered obvious by the Landh, Berg, or Schwarz references or the combination of them as the claims depend upon amended claim 12.

Accordingly, the Applicants respectfully request the withdrawal of the claim rejections under 35 U.S.C. § 102(b) and § 103(a) based upon any of the Landh, Berg, and Schwarz references or the combination of them.

Fees

The Applicants believe that they have provided the required fee in connection with the filing of this Response. Nevertheless, the Commissioner is hereby authorized to charge any fees due in connection with the filing of this Response to our Deposit Account, **No. 06-1448, reference PMX-003.02.**

Conclusion

The Applicants believe that the pending claims are in condition for allowance. If a telephone conversation with Applicants' Attorney would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Respectfully submitted,
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